

Service Date: November 23, 2005

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER of the) UTILITY DIVISION
Petition of Qwest Corporation to)
Amend ARM 38.5.4111) DOCKET NO. N2005.10.160
) ORDER NO. 6703

**ORDER ON PETITION FOR
AMENDMENT OF RULE**

Background

On October 20, 2005, Qwest Corporation (Qwest) filed, pursuant to § 2-4-315, MCA, and ARM 38.2.101 and 1.3.205, a petition for amendment of Public Service Commission (Commission) administrative rule 38.5.4111. Section 2-4-315, MCA, requires the Commission, within 60 days of filing, to either deny the petition in writing or “initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.” A decision to initiate rulemaking must also be in writing. § 2-4-315, MCA. On October 31, 2005 the Commission issued Notice of Petition for Amendment of Administrative Rule; Notice of Opportunity to Comment on Petition. The Commission indicated it must respond to the Qwest petition by December 12, 2005, and invited interested persons to submit initial comments by November 10, 2005, and reply comments by November 18, 2005.

Although no comments were filed in response to the October 31, 2005 Notice, Montana Independent Telecommunications Systems (MITS) and the Montana Telecommunications Association (MTA) filed comments in response to notice of a previous Qwest petition.¹ At the

¹ Qwest first filed a petition to amend ARM 38.5.4111 on August 15, 2005. N2005.8.121. That petition was noticed on August 31, 2005, and comments were received from MITS and MTA on September 13, 2005. On September 22,

direction of MITS and MTA these comments are made part of this docket. The “record evidence” in this docket, per § 2-4-315, MCA, consists of the Qwest petition and attached documents, the MITS and MTA comments in Docket No. N2005.8.121, and other documents consulted by the Commission which may be referred to in this Order. Qwest requested a hearing on its petition which is denied as unnecessary.

Summary of the Petition

Landline telecommunications customers in Montana have what is known as a “2-PIC” system. That is, they may select one telecommunications carrier for their intraLATA 1 + calling (local toll), and another carrier for their interLATA 1 + calling.² The interLATA carrier is typically referred to as the Primary Interexchange Carrier (PIC). The intraLATA carrier is typically referred to as the Local Primary Interexchange Carrier (LPIC). Customers may select one carrier as their LPIC and another carrier as their PIC; customers also have the option of having one carrier as both the PIC and LPIC.

When a customer changes a PIC or LPIC the customer’s local exchange carrier (LEC) is allowed to impose a one-time, non-recurring charge in order to recover costs associated with changing the PIC or LPIC. For Qwest the PIC non-recurring charge is \$5.00, contained in Federal Communications Commission (FCC) tariff. The Qwest LPIC non-recurring charge is also \$5.00, contained in Montana tariff. Thus, if a customer changes either the PIC or LPIC, the

2005 Qwest filed a Notice of Withdrawal of the petition, an associated tariff filing, N2005.8.122, and a request for temporary waiver of ARM 38.5.4111(2), N2005.8.120. These dockets – N2005.8.120, 121 and 122 – are closed. Qwest next filed a petition to amend ARM 38.5.4111 on October 13, 2005, N2005.10.154, along with an associated tariff filing and petition to temporarily waive ARM 38.5.4111(2). N2005.10.155. On October 20, 2005, before the Commission noticed the petition to amend ARM 38.5.4111, Qwest withdrew these filings, and dockets N2005.10.154 and 155 have been closed.

² A LATA (local access transport area) refers to a geographical area. Long distance (toll) calls are distinguished by being within (intra) a LATA, or between (inter) LATAs. “1 +” refers to the ability of a customer to make a long distance call, inter or intraLATA, by dialing 1, plus the area code and number, without having to dial an access code.

charge is the same.

ARM 38.5.4111(2) applies when a customer changes both the PIC and the LPIC. Specifically, that rule states that, “In cases in which customers change both their intraLATA PIC and their interLATA PIC at the same time, to either the same carrier or to separate carriers, a single PIC change charge shall apply.” To comply with this rule Qwest’s Montana tariff states that the FCC PIC change charge applies to simultaneous PIC and LPIC changes. In sum, Qwest now charges \$5.00 for a PIC change, an LPIC change, or both simultaneously.

On February 17, 2005 the FCC issued a Report and Order, “In the Matter of Presubscribed Interexchange Carrier Charges.” CC Docket No. 02-53. In that document the FCC explained that the \$5.00 PIC rate was established in 1984, that significant industry changes had occurred since that time, and that an evaluation of and change to the rate was warranted. To replace the single \$5.00 PIC rate the FCC adopted two rates: \$1.25 for electronically processed PIC changes; and \$5.50 for manually processed PIC changes.

Regarding simultaneous changes, the FCC decided a LEC should not be able to assess both a PIC and LPIC charge because the cost to perform a simultaneous change is the same as the cost to perform a single change. The FCC decided that for simultaneous changes the LEC should charge one half of the federal PIC charge: \$2.75 for a manual change and \$.62 for an electronic change. These charges are required to be effective January 1, 2006. The FCC suggested the LEC could recover remaining costs through state-tariffed LPIC change charges.

In light of the FCC decisions, Qwest requests that the following underlined language be added to ARM 38.5.4111(2):

In cases in which customers change both their intraLATA PIC and their interLATA PIC at the same time to either the same carrier or to separate carriers, a single PIC change charge shall apply. That single PIC change charge shall be one of the following: (a) the associated intraLATA PIC

change charge, (b) the associated interLATA PIC change charge, or (c) the total of one-half of the associated intraLATA PIC change charge plus one-half of the associated interLATA PIC change charge.

This amendment will allow Qwest to follow the FCC Report and Order. With any of the three options contained in the amendment, a customer ordering a simultaneous PIC and LPIC change will pay \$5.50 for a manually processed change and \$1.25 for an electronically processed change. Qwest states that these changes will allow it to recover its costs incurred for simultaneous changes.

Summary of Comments

MTA supports the Qwest petition, indicating the amendment will, ... “in light of new federal requirements, ... enable telecommunication carriers in Montana to recover their costs when making simultaneous PIC changes.” MITS also supports the petition, and “encourages the PSC to initiate a rulemaking for the purposes of accepting comments on this issue.”

Discussion and Decision

The Commission concludes that Qwest has provided sufficient reasons to support its petition to amend ARM 38.5.4111. Therefore, the Commission will begin a formal rulemaking. A final decision on amendment of the rule is reserved to the end of the rulemaking process.

Conclusions of Law

1. Qwest is a public utility subject to the regulatory jurisdiction of the Montana Public Service Commission. Title 69, MCA.
2. Qwest is an interested person and may petition to amend Commission rules. § 2-4-315, MCA.
3. The Commission has complied with the requirements of § 2-4-315, MCA, in response to the Qwest petition.

4. Based on the “record evidence” the Commission may lawfully grant the Qwest petition.

Order

The Qwest Petition for Amendment of Administrative Rule, described above, is granted. The Commission will initiate formal rulemaking proceedings in accordance with the Montana Administrative Procedure Act, § 2-4-301, et Seq., MCA.

DONE AND DATED this 22nd day of November, 2005, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.